



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP - 8 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

Edwin F. Bush, II
General Counsel
Appleton Coated, LLC
540 Prospect Street
Combined Locks, Wisconsin 54113

Re: In the Matter of: Appleton Coated, LLC
Docket No. CAA-05-2011-0052

Dear Mr. Bush:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves the above-referenced matter involving Appleton Coated, LLC (Docket No. CAA-05-2011-0052). As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP - 8 2011.

Pursuant to paragraph 34 of the CAFO, Appleton Coated, LLC must pay the civil penalty within 30 days of OCT - 8 2011. Your check must display the case name, case docket number CAA-05-2011-0052 and the billing document number 2751103A051.

Please direct any question regarding this case to Kevin Chow, Office of Regional Counsel, (312) 353-6181.

Sincerely,

Sara Breneman

Sara Breneman
Air Enforcement and Compliance Assurance Branch, MI/WI

Enclosure

cc: Regional Hearing Clerk/E-19J
Marcy Toney, Regional Judicial Officer, C-14J
Kevin Chow, Office of Regional Counsel, C-14J
Bill Baumann, Wisconsin Department of Natural Resources
Richard Wulk, Wisconsin Department of Natural Resources

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2011-0052
)	
Appleton Coated, LLC)	Proceeding to Assess a Civil Penalty
Combined Locks, Wisconsin,)	Under Section 113(d) of the Clean Air Act
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

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Consent Agreement and Final Order

Preliminary Statement

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Appleton Coated, LLC (Appleton Coated or Respondent), a corporation doing business in Wisconsin.
4. Pursuant to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Appleton Coated consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Appleton Coated admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Appleton Coated waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. 40 C.F.R. Part 63, the National Emission Standards for Hazardous Air Pollutants (NESHAP), sets forth general regulations in Subpart A, 40 C.F.R. § 63.1, which are applicable to groups subject to Part 63. Additional regulations specific to Paper and Other Web Coatings are set forth in Subpart JJJJ.

10. EPA promulgated NESHAP Subpart JJJJ on December 4, 2002 (67 Fed. Reg. 72341).

11. A "stationary source" under the NESHAP "means any building, structure, facility, or installation which emits or may emit any air pollutant." 40 C.F.R. § 63.2.

12. Subpart JJJJ applies "to each new and existing facility that is a major source of Hazardous Air Pollutants (HAP), as defined in 40 C.F.R. § 63.2, at which web coating lines are operated." 40 C.F.R. § 63.3290.

13. An "existing affected source" means "any affected source the construction or reconstruction of which is commenced on or before September 13, 2000, and has not undergone reconstruction as defined in § 63.2." 40 C.F.R. § 63.3310.

14. A “web coating line” means “any number of work stations, of which one or more applies a continuous layer of coating material across the entire width or any portion of the width of a web substrate, and any associated curing/drying equipment between an unwind or feed station and a rewind or cutting station.” 40 C.F.R. § 63.3310.

15. As required by 40 C.F.R. § 63.3330(a), owners or operators of existing affected sources must comply by the compliance date of December 5, 2005.

16. Subpart JJJJ, at 40 C.F.R. § 63.3400(b)(1), requires owners or operators subject to the Subpart to submit an initial notification for existing affected sources no later than 1 year before the compliance date.

17. Subpart JJJJ, at 40 C.F.R. § 63.3400(c), requires owners or operators subject to the Subpart to submit a Semi-Annual Compliance Report.

18. Subpart JJJJ, at 40 C.F.R. § 63.3400(e), requires owners or operators subject to the Subpart to submit a Notification of Compliance Status as specified in § 63.9(h).

19. Subpart JJJJ, at 40 C.F.R. § 63.3410(a), requires owners or operators subject to the Subpart to maintain the records specified in 40 C.F.R. §§ 63.3410(a)(1) and 63.3410(a)(2).

20. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

21. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United

States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

22. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

23. Appleton Coated owns and operates a paper manufacturing facility in Combined Locks, Wisconsin (the Facility). The Facility contains Process P51, which is a stationary source, an existing affected source, and a web coating line. Process P51 meets the location and definition criteria, was installed in 1996, and was not reconstructed after December 2002. Therefore, since the coater in Process P51 is separate from the paper machines that are used to produce the paper itself, Process P51 is considered an existing affected source.

24. From December 4, 2004, to August 19, 2009, Appleton Coated failed to timely submit an initial notification for existing affected sources no later than 1 year before the compliance date of December 5, 2005, as required 40 C.F.R. § 63.3400(b)(1).

25. From June 30, 2006, to August 19, 2009, Appleton Coated failed to timely submit Semi-Annual Compliance Reports as required by 40 C.F.R. § 63.3400(c).

26. From December 5, 2005, to August 19, 2009, Appleton Coated failed to timely submit a Notification of Compliance Status as specified in § 63.9(h) and required by 40 C.F.R. § 63.3400(e).

27. From December 5, 2005, to August 19, 2009, Appleton Coated failed to maintain records required by 40 C.F.R. §§ 63.3410(a)(1) and § 63.3410(a)(2).

28. Appleton Coated self-disclosed these violations to the EPA by letters dated July 10, 2009 and August 20, 2009, pursuant to the EPA's final policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 Fed. Reg. 19618 (April 11, 2000) (Audit Policy). On May 16, 2011, the EPA issued a determination that alleged that Appleton Coated did not meet Condition 2 of the Audit Policy due to Appleton Coated's continuing duty under its Title V permit and 40 C.F.R. § 70.5 to analyze the Facility's compliance status and annually certify compliance with the Act, and was therefore precluded from penalty mitigation under the Audit Policy. By letter dated June 23, 2011, Appleton Coated disputed the EPA's determination.

Stipulations

29. Respondent waives any right to appeal this CAFO.

30. Respondent certifies that it is complying fully with 40 C.F.R. Part 63, Subpart JJJJ.

31. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

32. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

33. In consideration of Respondent's cooperation and self-disclosure of the violations, Complainant agrees to mitigate the proposed penalty to \$15,000.

34. Within 30 days after the effective date of this CAFO, Respondent must pay the \$15,000 civil penalty by sending a cashier's or certified check by express mail, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note “Appleton Coated, LLC Consent Agreement and Final Order”, the docket number of this CAFO, and the billing document number.

35. Respondent must send a notice of payment that states the “Appleton Coated, LLC Consent Agreement and Final Order”, the docket number of this CAFO, and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Kevin Chow at the following addresses when it pays the civil penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Kevin Chow (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

36. This civil penalty is not deductible for federal tax purposes.

37. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

38. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

39. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

40. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

41. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

42. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Source Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

43. The terms of this CAFO bind Respondent, its successors, and assigns.

44. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

Consent Agreement and Final Order
In the Matter of: Appleton Coated, LLC
Docket No. CAA-05-2011-0052


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Final Order

This Consent Agreement and Final Order, as agreed to by parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-6-11
Date


Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order

In the Matter of: Appleton Coated, LLC

Docket No. CAA-05-2011-0052

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Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2011-0052 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed a second original copy by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Edwin F. Bush, II
General Counsel
Appleton Coated, LLC
540 Prospect Street
Combined Locks, Wisconsin 54113

I certify that I mailed copies of the CAFO by first-class mail, addressed as follows:

Bill Baumann
Section Chief, Compliance and Enforcement
Wisconsin Department of Natural Resources
PO Box 7921
Madison, Wisconsin 53707

Richard Wulk
Environmental Engineer Supervisor
Wisconsin Department of Natural Resources
2984 Shawano Avenue
Green Bay, Wisconsin 54313

I also certify that I delivered a copy of the CAFO by intra-office mail, addressed as follows:

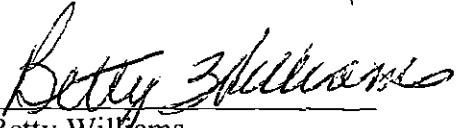
Marcy Toney
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard/Mail Code C-14J
Chicago, Illinois 60604

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On the 7th day of September 2011.

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Betty Williams
Administrative Program Assistant
Planning Administrative Section

CERTIFIED MAIL RECEIPT NUMBER:

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